

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JAMES A. HAMPTON v. WAYNE BRANDON, Warden,

Appeal from the Circuit Court for Hickman County
No. 06-5010C Jeffrey S. Bivens, Judge

No. M2006-01238-CCA-R3-HC - Filed November 21, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the habeas court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner has appealed the habeas court's order dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas court was correct in dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

James A. Hampton, Only, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Ronald L. Davis, District Attorney General; for the Appellee, State of Tennessee.

MEMORANDUM OPINION

The Petitioner is currently incarcerated serving a life sentence for aggravated rape and thirty-five years for armed robbery. The Petitioner has submitted this petition for a writ of habeas corpus claiming his sentence is illegal because the trial court stated on the armed robbery judgment that the armed robbery sentence "shall be served consecutively to sentence in the following counts Count 2 of Madison Circuit No. 83-202." Additionally, the judgment for the aggravated rape charge states that the aggravated rape charge "shall be served consecutively to sentence in the following counts Count 1 of Madison Circuit No. 83-202." The Petitioner claims that, pursuant to recent Tennessee

Supreme Court cases, sentences run consecutively to each other, as opposed to one sentence being run consecutively to the other, establish his sentence is illegal. At the habeas court, the State argued the Petitioner did not establish either a void judgment or an expired sentence and that any problem with the judgments should be considered mere clerical error. Finding the State's argument well taken, the trial court summarily denied the petition.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998) (citing State ex rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968); State ex rel. Wade v. Norvell, 443 S.W.2d 839 (Tenn. Crim. App. 1969). The burden is on the Petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291-91 (Tenn. 1964). A “habeas corpus petition may be dismissed without a hearing, and without the appointment of counsel for a hearing” if the petition does not allege facts showing the Petitioner is entitled to relief. State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636 (Tenn. 1967) (citing State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964)).

The Petitioner is alleging that the judgments in his case require the sentences to be run consecutively to each other. He is claiming this would create a never ending cycle of sentences. Although an allegation that one was sentenced in clear violation of a statute may be grounds for habeas corpus relief, the Petitioner is incorrect that his sentence is in violation of the law. See McLaney v. Bell, 59 S.W.3d 90 (Tenn. 2001). We agree with the habeas court that, at most, the Petitioner has pointed out a clerical mistake. See Tenn. R. Crim. P. 36; Calhoun v. Carlton, No. E2005-00001-CCA-R3-HC, 2006 WL 433680, at *3 (Tenn. Crim. App., at Jackson, Feb. 23, 2006), *no Tenn. R. App. P. 11 perm. app. filed*. However, we view the statements on the judgments differently from the Petitioner. In our opinion, the statements indicate that it does not matter which sentence is served first: the other one will be consecutive to it. Either way, the Petitioner is not entitled to relief.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the Petitioner has not established that he is entitled to habeas corpus relief based on a void judgment. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rule of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE